Single Bench

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P 5451 05

PETITIONER : JAGDEV S/O LAKHCHAMAN
aged 71 years
THROUGH,GENERAL POWER OF
ATTORNY HOLDER VIRENDRA
KUMAR VISHWAKARMA S/O SUKHDEV
VISHWAKARMA AGED 55YEARS
R/O LINK ROAD BILASPUR
TAH. &DISST. BILASPUR (C.G.)

P.R. No. 563/05
Presented by Shri Nadir Moha
dated 11-02-05

VS.

RESPONENT : MANJEAT SINGH S/O TRILOK SING
AGED 41 YEARS
OCCUPATION –CLOTH MARCHANT
R/O TIKRAPARA (NEAR Dr.ABHIRAM
SHARMA'S HOUSE) BILASPUR
TAH. DISST. BILASPUR (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(57)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP.545/05 **सन् 200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

01.03.2005

Shri Avinash Mishra, counsel for the petitioner.

The petitioner has preferred this petition questioning the legality and correctness of order dated 10.01.2005 passed by learned 3rd Additional District Judge, Bilaspur in Misc. Appeal No.45/2004 rejecting the appeal of the petitioner herein and affirming the order dated 21.12.2004 passed by trial court in Civil Suit No.283A/2004 whereby learned 3rd Civil Judge Class-II, Bilaspur rejected the application of the petitioner herein filed under Order 39 Rules 1 & 2 read with Section 151 of Code of Civil Procedure for grant of temporary injunction.

Brief facts leading to filing of this petition are that the petitioner herein filed a civil suit, which is pending before learned 3rd Civil Judge Class-II, Bilaspur, for grant of permanent injunction restraining the respondent herein from taking possession and raising construction on the urban land bearing Khasra No.164/13 admeasuring 0.19 acre existing in Mauja-Juna Bilaspur, P.H. No.22, Samta Colony, Tikrapara claiming that the said land belongs to the petitioner, whereas, the nephew of petitioner herein namely Shyamnarayan transferred a land bearing Khasra No.164/12 admeasuring 3792 sq. ft. by a registered sale deed dated 12.12.2003 in consideration of Rs.4,00,000/- to the respondent herein.

The further case of the petitioner is that land bearing Khasra No.164/12, which has been transferred by Shyamnarayan, has been declared as 'Nistar land' for the purpose of construction of public

XI-HC-22

(68)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 545/05 **सन्** **200**

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road by Municipal Corporation and therefore, said Shyamnarayan was not entitled to transfer the said land. Further case of the petitioner is that on the strength of the said registered sale deed executed in his favour by said Shyamnarayan respondent started construction on the land of the petitioner.

Learned trial court as well as appellate court after perusing the pleadings, documents and hearing the arguments of counsel for respective parties reached to the conclusion that the petitioner herein failed to establish a prima-facie case in his favour for grant of temporary injunction, as respondent herein is raising construction on the strength of map approved by Municipal Corporation on the basis of registered sale deed executed in his favour by said Shyamnarayan and also the entry effected in the Municipal record in favour of the respondent herein. Further that the petitioner has not been able to establish that the said construction is being raised on the petitioner's land bearing Khasra No.164/13.

I have heard learned counsel for the petitioner and perused the orders passed by the trial court and appellate court.

Learned counsel for the petitioner was not able to show that how the construction which is being raised by the respondent herein was on the land bearing Khasra No.164/13, even the Court below has observed that the petitioner has not been able to pin point in the map annexed by him along with plaint that on which portion of that land the construction is being raised by the respondent.

Sd/-
L.C.Bhadoo
Judge